

Before the  
Commission on Common Ownership Communities  
for Montgomery County, Maryland  
June 10, 1993

In the Matter of  
Rex D'Costa, Owner of  
18633 Tarragon Way  
Germantown, MD 20874  
Complainant

**Vs.**

Tom Doyle, President  
Board of Directors  
Cinnamon Woods Homes Association  
Respondent

Case No. 136-0

## Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 10th day of June, 1993, found determined and ordered as follows:

On September 30, 1991, Rex D'Costa, Owner of 18633 Tarragon Way, Germantown, MD 20874 (hereinafter the "Complainant") filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that Cinnamon Woods Home Association, Board of Directors, Governing Body for Cinnamon Woods Home Association (hereinafter the "Respondent") ordered him to remove those sections of his split rail fence that are not in compliance with ARC #7 of the Rules and Regulations, entitled, "Fences/ Landscaping." ARC.

The Complainant further alleged that, although he does not contest the judgment or discretion of the Respondent Board to enforce architectural guidelines, the disputed fence sections were erected on the property, in their present location and configuration, prior to the time he purchased his unit, on November 28, 1990.

The Respondent Board contended that the Complainant never sought nor was he ever granted approval from the Architectural Review Committee to erect the split rail fence sections as they are presently configured on his property.

Furthermore, the Respondent Board contended that only those sections of the split rail fence in violation of the Rules and Regulations must be removed, and that the Complainant's dispute may be with the previous owner(s), rather than with the Board of Directors.

The Complainant sought an order for the Respondent to allow him to keep his fence the way it is currently configured.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On April 21, 1993, the Commission conducted a public hearing in this case.

#### STIPULATIONS OF FACT

Both the Complainant and the Respondent agreed at the hearing to the following Stipulations of Fact:

1. The Complainant and his wife own a residence at 18633 Tarragon Way, Germantown, Maryland.
2. The mentioned residence is covered by the rules, regulations, covenants, bylaws, etc., (hereinafter referred to as "governing documents") issued by the Cinnamon Woods Homes Association.
3. The mentioned governing documents describe the type of split rail fence which may be erected on property located within the housing development.
4. The fence on the Respondent's property, apparently erected by the previous owners in 1987 and before Respondent purchased the property in 1990, was ordered to be corrected by the Cinnamon Woods Homes Association to conform to the Association's governing documents.
5. The Complainant agreed that he received the mentioned order from the Respondent Association.
6. Despite receipt by the Respondent of the mentioned order, the Respondent has not brought the fence into compliance with the Association's governing documents.

#### FINDINGS OF FACT

Based on the stipulations of the parties and evidence of record, the Commission makes the following findings:

1. The Complainant properly requested the Association to make an exception to its rules and regulations to allow him to retain his fence as configured.
2. The Association properly reviewed and rejected the Complainant's request for an exception for his fence, and so notified Complainant.
3. The Complainant later filed a timely complaint with the Commission seeking "an order to allow him to keep his fence the way it is currently configured" (Exhibit 12).

4. On April 21, 1993, a hearing on the Complainant's complaint was conducted by Diane A. Fox and Robert E. Sullivan, Commissioners, along with the undersigned serving as Chairperson of the hearing panel.

#### CONCLUSIONS OF LAW

Accordingly, the Commission concludes based upon a preponderance of the evidence and after full and fair consideration of the evidence of record, that:

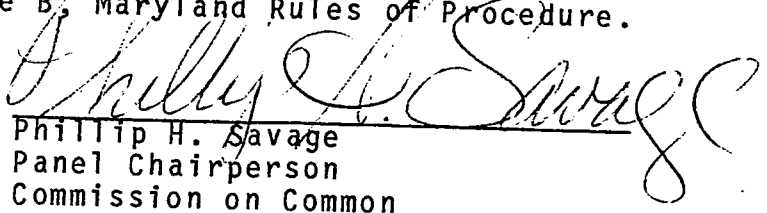
1. The Association adopted on July 9, 1987, rules and regulations for enforcing its governing documents against homeowners who fail to abide by the Association's governing documents. (Page 84 of the investigative file).
2. The cited July 8, 1987, Enforcement Rules and Regulations outline clear and specific procedures to be followed to correct any violation by homeowners, including a hearing by the Association conducted by the Association's Board of Directors, and other procedural requirements.
3. The Complainant filed his complaint in the absence of the Association acting adversely against him, in accordance with the mentioned Enforcement Rules and Regulations, regarding the configuration of his fence. There was no hearing held and no demand to cease and desist or be subject to a particular fine or action, as set forth in the Association's Enforcement Rules and Regulations. (Page 87 of the investigative file).
4. Thus, at this time, the Respondent Board of Directors has not taken final action, such as the imposition of sanctions or fines, against the Complainant for his alleged continued violation of the Association's Rules and Regulations; further, all Association remedies and procedures have not been exhausted.
5. Therefore, the Commission on Common Ownership Communities must conclude that the Complainant has not yet been injured, in accordance with law, by the Respondent.
6. The complaining party must demonstrate that he/she has been injured due to action taken or failure to act by the Respondent Association, in order for the dispute to be a matter properly reviewed and decided by this Commission.

#### ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders that Case No. 136-0 is dismissed without prejudice.

The foregoing was concurred in by panel members Fox, Sullivan, and Savage.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.

  
Phillip H. Savage  
Panel Chairperson  
Commission on Common  
Ownership Communities

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